

**From:** [Burkholder Kurt](#)  
**To:** [Lori Cora/R10/USEPA/US@EPA](#)  
**Cc:** [ANDERSON Jim M](#); [KEPLER Rick J](#)  
**Subject:** Portland Harbor  
**Date:** 03/20/2008 03:20 PM

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Lori, the memo is accurate regarding Oregon's rules.

-----Original Message-----

From: Cora.Lori@epamail.epa.gov [mailto:Cora.Lori@epamail.epa.gov]  
Sent: Thursday, March 20, 2008 3:16 PM  
To: christopherburford@ctuir.com; cunninghame@gorge.net;  
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Cc: Humphrey.Chip@epamail.epa.gov; Blischke.Eric@epamail.epa.gov  
Subject: Fw: Portland Harbor

Hello, LCT Folks. I am forwarding an email and memorandum send by Joan Snyder in which they argue that pacific lamprey should be not be assessed on the individual level in the ERA.

Kurt Burkholder: After you have time to look at this, I would like to talk about the lamprey's status under state law.

If any one has controverting legal analysis, please forward it on. My initial impression is that that EPA does not have a strong case for assessing pacific lamprey on an individual basis. Let me know if you would like to have a conference call.

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----- Forwarded by Lori Cora/R10/USEPA/US on 03/20/2008 03:07 PM -----

"Snyder, Joan"  
<JPSNYDER@stoel.com>

03/14/2008 03:24 PM

To  
Lori Cora/R10/USEPA/US@EPA

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Subject  
Portland Harbor

Hi Lori,

As I indicated in my voicemail message, the LWG Management Team wants to ensure that we do everything we can to prevent any log jams in the development of the RI/FS. One thing they have asked the LWG Legal

Committee to do is to make sure that any legal issues are discussed with EPA as soon as they become apparent, so we can try to establish a common legal understanding of the issue. To make that happen, we asked the LWG Common Consultants to identify for us any technical issues they are dealing with that require resolution of some legal component.

The first one that has popped up is the issue of which species are assessed in the eco-risk assessment at the individual organism level. EPA's Problem Formulation document on the Baseline Ecological Risk Assessment identified three species, juvenile Chinook salmon, bald eagles and lamprey as "special status species" to be evaluated at the more conservative individual organism level. We agree that result may be appropriate for the Chinook and the bald eagles (at this time the bald eagle has been delisted federally, but still has "threatened" status under Oregon law). For the reasons discussed in the attached, it does not seem that would be the result under EPA guidance for lamprey, which previously was a candidate for ESA listing, but no longer is.

So, once you have a chance to look at this, could you please give me a call to talk about it? Thanks.

Joan P. Snyder  
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(See attached file: Lamprey memo.PDF)

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